HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Second Appeal No. 76 of 2007

APPELLANT PLAINTIFF	:	Smt. Maya Sahu, W/o Shri Yashwant Kumar Sahu, Aged about 46 years, R/o House No. 54/59 Near Brinda Sonkar School, Ashwani Nagar, Raipur District Raipur (C.G.)
		Versus
RESPONDENTS DEFENDANTS	: 1.	Smt. Geeta Devi Agrawal, W/o Shri Ramdayal Agrawal, Aged about 65 years.
	: 2.	Shri Hari Vallabh Agrawal, S/o Shri Ramdayal Agrawal, Aged about 36 years.
		Both residents of House No. 323-A, Sunder Nagar, Raipur, District-Raipur (C.G.)

Second Appeal under Section 100 of the Code of Civil Procedure

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Present:-

Shri Sanjay K. Agrawal with Shri Sourabh Sharma, counsel for the appellant/plaintiff.

Shri Prashant Mishra, Senior Advocate with Shri H.S.Patel, counsel for the respondents.

ORAL ORDER

(Passed on 21.11.2007)

Heard on admission.

2. The appellant/plaintiff is aggrieved by the judgment and decree dated 29th January, 2007 passed by the 6th Additional District Judge, Raipur in Civil Appeal No. 1-A of 2006 whereby the judgment and decree passed by the 1st Additional Civil Judge, Class-I, Raipur in Civil Suit No.97-A of 2005 dated 29.09.2006 decreeing the suit in favour of the plaintiff, was reversed.

3. The appellant/plaintiff's suit for a declaration that she had a right of easement over the suit land situated to the east of the land purchased by her was founded on an endorsement in the registered sale deed Ex.P.1 executed by Vineet Shrivastava in her favour that the suit land situated to the east of the land purchased by her was a passage and the pleadings paragraph 4 of the plaint that right of easement claimed by her was since time immemorial and such right was open, peaceful and without hindrance. However, neither the plaintiff examined Vineet Shrivastava nor led any evidence to prove the right of easement claimed by her.

4. The trial Court decreed the suit in favour of the appellant/plaintiff merely on the strength of the above mentioned endorsement in sale deed Ex.P.1 and also on the basis of Ex.D.2, i.e., the sale deed through which the defendants had acquired title over the suit land in which it was mentioned that to the south of the land purchased by them, there existed a road. However, in appeal preferred by the respondents/defendants, the lower appellate Court considered the documents Ex.P.1, Ex.D.2 and D.9 as also the report and testimony of the Commissioner – Nand Kumar Dubey, the Revenue Inspector and recorded a finding that the road mentioned in Ex.D.2 was the Mahadev *Ghat* Road and not the suit land claimed as passage.

5. Shri Sanjay K. Agrawal, learned counsel for the appellant/plaintiff has placed reliance on ***Sir Chunilal V. Mehta and sons Ltd.*** v. ***Century Spinning and Manufacturing Co. Ltd.,*** **AIR 1962 SC 1314, Santakumari and others** v. **Lakshmi Amma Janaki Amma (D) By LRs. And others** and ***Santosh Hazari*** v. ***Purushottam Tiwari (Deceased) BY LRs.,*** **(2001) 3 SCC 179** and has argued that the lower appellate Court, on an erroneous construction of the document Ex.P.1 and the report of the Revenue Inspector

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– Nand Kumar Dubey, has reversed the finding which is liable to be set aside.

6. Having considered the submission made by learned counsel for the appellant, I have perused the record of Civil Suit No. 97-A of 2005 as also the judgments passed by both the Courts below.

7. The appellant/plaintiff neither examined Vineet Shrivastava nor led any evidence to prove that the suit land was being used as passage since time immemorial and such right was open, peaceful and without hindrance. In this manner, the plaintiff had utterly failed to establish right of easement over the suit land. It is noticed that so far as the location of the land purchased by the plaintiff from Vineet Shrivastava is concerned, there is an admission by the plaintiff in paragraph 10 that it has been erroneously mentioned in sale deed Ex.P.1. The testimony of Revenue Inspector – Nand Kumar Dubey also did not support the case of the appellant/plaintiff. Ex. D-2, i.e., the sale deed through which the defendants had acquired title over the suit land read with the testimony of Nand Kumar Dubey – Revenue Inspector proved that the defendants had title over the suit land. During the course of arguments, it could not be demonstrated that merely on the strength of an entry in the registered sale deed executed by Vineet Shrivastava in favour of the appellant/plaintiff that to the east of the land purchased by her, there was a passage, the plaintiff could acquire right of easement over such land especially when no evidence was led by her to prove such a right of easement, the vendor Vineet Shrivastava was not examined, report of the Revenue Inspector – Nand Kumar Dubey did not support the appellant/plaintiff's case and the documentary evidence led by the defendants proved their title over the land over which right of passage was claimed.

8. In the above mentioned circumstances, the finding of fact recorded by the lower appellate Court that the plaintiff has failed to prove that she had right of easement over the suit land is based on proper appreciation of evidence oral as well as documentary. In this view of matter, no substantial question of law arises for determination in this appeal.

9. Accordingly, the second appeal is dismissed at the admission stage. Stay granted vide order dated 11.05.2007 is vacated. No order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge